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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 573

CLIFFORD DWANE HELM,

Petitioner,

vs.

STATE OF NEVADA

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

E. P. Carville
Counsel for Petitioner

Carville & Carville
Of Counsel

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 571

CLIFFORD DWANE HELM,
Petitioner and Appellant below,

vs.

STATE OF NEVADA,
Respondent and Appellee below

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA

To the Honorable Fred M. Vinson, Chief Justice of the United States Supreme Court and the Associate Justices of Said Court:

Your petitioner respectfully shows:

I

Summary Statement of Matters Involved

This is a petition for a Writ of Certiorari to review the Judgment of the Supreme Court of the State of Nevada affirming the judgment and sentence of life imprisonment

imposed upon petitioner by the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

Petitioner was informed against by the District Attorney of Clark County, State of Nevada, on the 14th day of April, 1947, charging that the petitioner did, "on the 25th day of March, 1947, willfully, lawfully and feloniously, and with malice aforethought, kill one Frank Ferroni, Jr., also known as John Beasley, a human being." That on the 16th day of April, 1947, petitioner entered a plea of not guilty to said charge and the trial of his case was set for Monday, May 26, 1947. On said last mentioned date, upon motion, the trial of petitioner's case was reset for June 2, 1947.

On June 2, 1947, the trial of said action commenced with the selection of a jury and during the course of the selection of said jury the trial had reached the stage in said proceedings when the petitioner and the State of Nevada were exercising peremptory challenges to members of the jury who had been passed for cause. During the exercise of said peremptory challenges the State of Nevada had used five peremptory challenges and had passed its sixth peremptory challenge. Petitioner had used one peremptory challenge and had passed four peremptory challenges. Each of the parties was entitled to eight peremptory challenges under the law of the State of Nevada. At this state of the proceeding defendant requested permission to exercise his sixth peremptory challenge, which permission was denied by the Judge of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, and the court ordered the jury sworn to try the case. The jury was then sworn by the Clerk of the Court to try petitioner's case, the information was read to the jury, defendant's plea of not guilty stated to the jury, and the District Attorney of Clark County, Nevada, made his opening statement to the jury as to what the State of

Nevada expected to prove as purported facts in support of the information so filed. Petitioner then reserved his right to have his attorneys make his statement of his proposed defense at a later time and the jurors were placed in the custody of officers sworn by the Clerk of said Court and it was ordered by the Court that the jury be kept together during the progress of the trial.

On June 4, 1947, the jury was conducted by an officer in charge into Court for the opening of the session for a continuation of petitioner's trial and after the Court convened the Judge of said Court stated that it was his opinion that the Court had erred in denying the defendant the right to exercise his sixth peremptory challenge and, over the objection of petitioner, declared a mistrial and excused the jury from further service in the case. Petitioner's case was reset for trial on September 15, 1947. On September 15, 1947, petitioner presented his motion to withdraw his former plea of not guilty for the purpose of substituting therefor a plea of "once in jeopardy". This motion was denied by the trial court and an exception noted by the petitioner. The court then proceeded with the selection of a second jury to try petitioner upon the same charge for which the first jury had been discharged from hearing. Thereafter, and on October 2, 1947, defendant was found guilty by the second jury of murder of the first degree and his punishment fixed at imprisonment for life in the Nevada State Penitentiary.

On October 4, 1947, motion by petitioner for a new trial was denied petitioner by the trial court and he was sentenced to life imprisonment in the Nevada State Penitentiary.

An appeal of petitioner's case was perfected to the Nevada Supreme Court upon the specification of error, among others, that the trial court erred in denying petitioner's plea of "once in jeopardy". On August 11, 1949,

the Supreme Court of the State of Nevada affirmed the judgment of the lower court. (State vs. Helm, 209 Pac. 2nd 187).

In due time petitioner filed a petition for rehearing in the Nevada Supreme Court, which petition was denied by said Court on November 2, 1949.

II

One of the Questions Involved in Said Appeal Was:

1. Did the discharge of the first jury by the trial court amount to an acquittal and was petitioner placed twice in jeopardy by the trial court's act of declaring a mistrial after the first jury was sworn to try petitioner's case?

2. The Supreme Court of the State of Nevada has decided a Federal question of substance not heretofore decided by the Supreme Court of the United States and in a way not in accord with applicable decisions of the said Supreme Court of the United States:

(a) By holding that petitioner had not been placed once in jeopardy and denying his motion for an acquittal after the discharge of the first jury duly impanelled and sworn in his case.

(b) That petitioner was found guilty of first degree murder and sentenced to life imprisonment in violation of Article I, Section 8 of the Constitution of the State of Nevada as he was twice placed in jeopardy for the same offense and deprived of his liberty without due process of law.

(c) That petitioner was found guilty of murder of the first degree and sentenced to life imprisonment in violation of Section I of the Fourteenth Amendment of the United States Constitution as he was deprived of his liberty

without due process of law when the trial Judge discharged the first jury duly impanelled and sworn in his case over the objections of petitioner and without his consent.

(d) Petitioner was likewise found guilty of first degree murder and deprived of his liberty in violation of the Fifth Amendment of the United States Constitution when the trial Judge discharged the first jury and petitioner was placed in jeopardy for the same offense by the selection of a second jury and his trial held before said trial court and the second jury.

All of the foregoing questions were decided by the Nevada Supreme Court and materially affected the determination of the appeal.

III

This Court Has Jurisdiction

28 U.S.C.A. #1257 (3)

A Federal question was raised in the Court of first instance by pleading (1) "once in jeopardy for the offense charged", (2) by petitioner's requesting and being denied the right to withdraw his plea of not guilty and substitute therefor a plea of "once in jeopardy".

Attached hereto and made a part hereof and marked Exhibit "A" is a schedule of proceedings had in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, and pertinent to the question involved as taken from the record on appeal and bill of exceptions filed by petitioner on his appeal to the Nevada Supreme Court, duly certified by the Clerk of said Supreme Court.

WHEREFORE, your petitioner prays that a Writ of Certiorari issue to the Supreme Court of the State of Nevada in the case numbered and entitled on its docket "No. 3530,

State of Nevada, Respondent, vs. Clifford Duane Helm, Appellant" to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that judgment herein of said Supreme Court of the State of Nevada be reversed by the court, and for such other relief as to the court may seem proper.

CLIFFORD DWANE HELM,
Petitioner.

E. P. CARVILLE,
Counsel for Petitioner.

CARVILLE AND CARVILLE,
Attorneys at Law,
Reno, Nevada,
Of Counsel for Petitioner.

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